

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7856 of 1995

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NAROTAMBHAI NATHABHAI MODI

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioners

Mr. V.B.Gharaniya, A.G.P. for Respondent No. 1, 2

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 02/09/97

ORAL JUDGEMENT

The short question that arises for the Court's consideration is which is the date on which the petitioners herein can be said to have retired from service. The facts leading to the present petition are as under :

2. All the petitioners before this Court are coincidentally born on 1st August, 1936 and attained the age of 58 years [age of superannuation] on 1st August, 1994. Under orders dated 1st July, 1994, the petitioners were retired from service on 31st August, 1994 and in view of the existing Government policy, were continued in service till the end of the academic term i.e. till 31st October, 1994. Accordingly, the petitioners have served under the respondents upto 31st October, 1994.

3. The petitioners now claim that since the petitioners were born on 1st August, 1936, they must be treated to have attained the age of superannuation on 31st July and should have been retired from service on 31st July, 1994. They, therefore, pray for a declaration that the petitioners retired from service on 31st July, 1994. Learned advocate Mr. Vyas appearing for the petitioners has relied upon the Government Resolution dated 5th September, 1978 which contained the Government Policy in respect of the date of retirement of the Government servant. Said resolution refers to the earlier resolution passed on 29th October, 1975. Learned Assistant Government Pleader Mr. Gharaniya has placed on records copy of the Government Resolution dated 29th October, 1975 which is taken on record. It appears that the said Government Resolution dated 29th October, 1975 was passed in view of the recommendations made by the Pay Commission. Under the said Resolution, it is decided that the Government servant born on 1st day of any month shall be retired on the afternoon of the last day of the preceding month and those who are born on any other day of the month shall be retired from service on the last day of that month. The resolution dated 5th September, 1988 has been passed in partial modification of the earlier resolution dated 29th October, 1975. Under the said resolution, it is decided that; " with a view to simplifying the issue further, the Government is pleased to decide that a Government employee shall now retire on the last day of the month in which he superannuates." On perusal of both the aforesaid resolutions, it is evident that a uniform rule of superannuating the Government servant has now been accepted by the Government since 1st October, 1988 i.e. prior to the 1st October, 1988, the Government servants attaining the age of superannuation on 1st day of a month was retiring from service on the last day of the preceding month while rest of the Government servants would retire from service on the last day of the month in which they attained the age of superannuation. Under the modified policy, since 1st October, 1988, all the Government servants reaching the age of superannuation whether on the first day of the

month or any other day would superannuate from service on the last day of that month. The Government intention to apply a uniform policy to all the government servants is, therefore, evident from the language of the above referred resolution dated 5th September, 1988. In my view, therefore, the respondents' action in retiring the petitioners from service on 31st August, 1994 is in consonance with the Government policy contained in the above referred resolution dated 5th September, 1988. The petitioners have, therefore, rightly been retired from service on 31st August, 1994 and the petitioners also have taken advantage of the orders made on 1st July, 1994 and have continued in service upto 31st August, 1994. Neither of the petitioners questioned the decision of the respondents authorities to retire the petitioners from service on 31st August, 1994. The petitioners, thus, having taken advantage of the orders made on 1st July, 1994 should not now be permitted to claim that they stood retired from service on 31st July, 1994.

4. In support of his contention, Mr. Vyas has relied upon the judgment of the Supreme Court in the matter of PrabhuDayal Sesma vs. State of Rajasthan and another [AIR 1986 SC 1948]. In the matter before the Supreme Court, the question arose that a candidate applying for the post under the State Government can be said to have attained a particular age. The Court held that "in calculating a person's age, day of his birth must be counted as a whole day and he attains the specified age on the day preceding anniversary of his birth day." There cannot be any dispute regarding the principles laid down in the aforesaid judgment. Undoubtedly, since the petitioners were born on 1st August, 1936, their birth anniversary would fall on 1st August, 1994. The petitioners, therefore, would attain the age of 58 years on 31st July, 1994 and would retire from service on 31st July, 1994. Even under the Government resolution dated 5th September, 1988, it is held that the Government employee who is born on 1st day of a month shall retire on the last day of the month in which he superannuates. If these words are given literal meaning, the petitioners can be said to have been superannuated on 31st July 1994 and they should have been retired on 31st July, 1994. [i.e. on the last day of the month in which they superannuated]. However, the Government intention, as it is discussed hereinabove is to apply a uniform policy regarding all the government servants and keeping in view this intention, the petitioners have been retired from service on 31st August, 1994. They, therefore, cannot be given a declaration that they have retired from

service on 31st July, 1994.

In view of the above discussion, this petition fails. Petition is dismissed. Rule is discharged. There shall be no order as to costs.

Vyas